

TOWN OF KITTERY, MAINE  
BOARD OF APPEALS

APPROVED  
May 14, 2013

**Members present:** Vern Gardner, Craig Wilson, Brian Boyle, Brett Costa, Norm Leon

**Members absent:** None

**Staff:** Heather Ross, Code Enforcement Officer

The meeting was called to order at 7:03 p.m.  
Pledge to the Flag

**Mr. Wilson** noted Title 16.1.5.2.F.4.a. authorizes the Board of Appeals to hear the following miscellaneous variation appeal.

**ITEM 1** – Jill Belilah requesting a miscellaneous variation to the terms of Title 16 Section 3.2.15D to construct a second floor addition that will overhang the existing garage, on property located at 4 Gerrish Court, Map 4 Lot 42, zoned Mixed Use-Kittery Foreside.

Tracey Johnson, 4 Gerrish Court, made the presentation for the applicant.

Mr. Gardner asked Ms. Johnson about phone calls she made to Board members.

It was determined the phone calls were made to inquire about Board member attendance at the meeting as the previous hearing on the application had been postponed due to a lack of quorum. Mr. Gardner concluded that there had been no ex-parte communication.

The CEO made her presentation to the Board.

There was general consensus by the Board that this was a "no closer case".

Mr. Gardner read a section from The Maine Municipal Association's Manual for Local Land Use Appeals Board about conformity

Mr. Gardner asked if the requested expansion was no more non-conforming

The CEO stated that was correct.

Mr. Boyle asked what the Chairman wanted of the applicant.

Mr. Gardner stated he wanted the applicant to make the addition less non-conforming by moving or dismantling and rebuilding if there is space on the lot to make it more conforming.

Ms. Johnson stated she did not believe there is any conforming space on the property that would meet the setback requirements.

Mr. Leon stated it seems appropriate that the addition of a second floor would not make the building more nonconforming than it previously was.

Mr. Wilson noted the citation stated 'absent a local ordinance', which Kittery does have, noting that nonconforming structures may be expanded as long as they are not more nonconforming. This is the Town's ordinance. Especially in the Foreside, space is limited.

Mr. Costa cited Title 16.7.3.5.6 where it specifically deals with wetland setbacks, it allows expansion to a certain percentage.

The CEO cited Title 16.7.3.5.5 Nonconforming Structure Repair and/or Expansion.

Mr. Gardner cited Title 16.7.3.5.2 *Expansion of nonconforming uses is prohibited, except nonconforming residential uses may be expanded within existing residential structures or within expansions of such structures as allowed in Section 16.7.3.5.4 Nonconforming Residential Use in Commercial Zones Expansion.*

The CEO explained this is a mixed-use zone and is a conforming use. The structure is nonconforming, but the lot and use is conforming. The second floor expansion extends an additional 2'7" along the front. If the expansion followed the same lines as the original nonconforming structure it would not be before the Board of Appeals.

Mr. Wilson noted the application appears to conform with Titles 16.6.6.1 Conditions and 16.6.6.2 Factors for Consideration, as applicable.  
Board members concurred.

Mr. Leon moved the Board of Appeals grants a miscellaneous variation to Jill Belilah to the terms of Title 16 Section 3.2.15.D to construct a second floor addition that will overhang the existing garage on property located at 4 Gerrish Court, Map 4 Lot 42, in Mixed Use-Kittery Foreside zone with no conditions attached.  
Mr. Boyle seconded  
Motion carries unanimously.

#### Findings of Fact

1. Ms. Tracy Johnson appeared on behalf of herself and Jill Belilah as residents of 4 Gerrish Court requesting a miscellaneous variation to the standards of 16.3.2.15.D.
2. Applicant is requesting an expansion that will overhang the existing garage.
3. Property is located at 4 Gerrish Court, Map 4, Lot 42 in the Mixed-Use Kittery Foreside zone.
4. The garage is free-standing.
5. The second floor will contain non-living studio space, and extend an additional 2'7" to the front.
6. This is a conforming lot with a nonconforming structure. The right side yard setback is 0 with the rear yard setback of 8" where 10 feet is required for both.
7. The existing front yard is 64 feet where 10 feet is required. The expansion will reduce this dimension to 61'5".
8. There was no public comment for or against this application.
9. The Board found in Title 16.6.6.1 Conditions and 16.6.6.2 Factors for Consideration, the applicant was conforming where applicable.
10. There was Board discussion as to whether the building should be moved to make it more conforming.
11. Testimony from Ms. Johnson stated there was no available area on the lot that would make it more conforming.
12. There was Board discussion regarding Title 16.7.3.5.5 and Title 16.7.3.5.2.

Mr. Cost moved to accept the Findings as read  
Mr. Leon seconded  
Motion carried unanimously

#### Conclusion

Under Title 16.7.3.5.5.A. Nonconforming Structure Repair and/or Expansion, the Board finds this is an expansion and is no closer than the current structure to the right and rear side yard setbacks, complies with Title 16.6.6.2, and the Board approved the application as submitted.

Mr. Boyle moved to accept the Conclusion as read.  
Mr. Costa seconded  
Motion carried unanimously.

Chairman Gardner noted this approval is not the granting of a building permit and any aggrieved person has 45 days to appeal the decision of the Board to Superior Court.

#### Minutes – April 9, 2013

Mr. Leon moved to accept the minutes as submitted  
Mr. Wilson seconded  
Motion carried unanimously

Chairman Gardner adjourned the meeting.

The Kittery BOA meeting of May 14, 2013 adjourned at 7:31 p.m.  
Submitted by Jan Fisk, May 20, 2013